

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Gary CERASO,	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 3:01cv193 (PCD)
	:	
MOTIVA ENTERS., LLC, et al.,	:	
Defendants.	:	

RULING ON DEFENDANTS' MOTION TO COMPEL

Defendants move pursuant to FED. R. CIV. P. 37(a) for an order to compel Plaintiff to respond to interrogatories and to produce documents, which Defendants requested in accordance with FED. R. CIV. P. 34(b). Defendants' motion is granted.

I. STATEMENT OF JURISDICTION

Plaintiff sues under the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq., for wrongful termination of a gas station franchise agreement. As such, this court has subject matter jurisdiction pursuant to 15 U.S.C. § 2805(a) and 28 U.S.C. § 1331.

II. BACKGROUND

Plaintiff, a gas station operator, is the former franchisee of Defendants. On November 2, 2000, the Town of Fairfield Zoning Board of Appeals determined that from December 17, 1999 until November 2, 2000 Plaintiff had been in violation of Zoning Regulation § 27.4.8.5, which permits no more than five cars, repaired or waiting repair, to be parked on a lot. The Petroleum Practices Marketing Practices Act, 15 U.S.C. §§ 2802(b)(2)(C), 2802(c)(11), permits termination of a franchise when there has been a violation of local laws or regulations. After notice, on February 17, 2001, Defendants terminated Plaintiff's franchise.

Plaintiff filed suit on February 6, 2001. On March 26, 2001, Defendants served their First Set of Interrogatories and First Request for Production of Documents. On April 27, 2001, Plaintiff objected to all of Defendants' discovery requests. Defendants now file the present Motion to Compel. Plaintiff submits a chambers copy of his memorandum in opposition.

III. MOTION FOR EXPEDITED CONSIDERATION

Defendants move for expedited consideration of their motion to compel responses to Defendants' First Set of Interrogatories and First Request for Production of Documents. Plaintiff does not submit any opposition. The motion is granted.

IV. MOTION TO COMPEL

FED. R. CIV. P. 26(b)(1) permits "discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Plaintiff's claim centers around Defendants' termination of his franchise. He apparently asserts that there were never more than five cars stored on the service station lot, repaired or awaiting repair at any time between December 17, 1999 and November 2, 2000.¹

Plaintiff makes several objections to Defendants' interrogatories and requests for production. Plaintiff first looks to the Petroleum Marketing Practices Act, 15 U.S.C.

¹ The parties do not address why the determination by the Zoning Board of Appeals that Plaintiff had violated the zoning ordinance is not sufficient in and of itself to prove a violation of local laws or regulations. If so, Plaintiff's protestations to the contrary would be irrelevant and Defendants' discovery to reprove the violation would seemingly be unnecessary.

§ 2802(b)(2)(C), which basically limits the event on which termination of a franchise may be based to not more than 120 days before notification of termination is given.

Notification of termination was given on November 13, 2000. Plaintiff therefore objects to discovery on issues more than 120 days before this date. The objection is without merit. The 120-day period is not a statutory bar on discovery; it is a notice requirement.

The relevant statutory event was the November 2, 2000 Zoning Board of Appeals determination, which is within 120 days of the notice of termination on November 13, 2000. The Zoning Board of Appeals determination was that Plaintiff had been in violation of the zoning regulation from December 17, 1999 until November 2, 2000, a period of more than a ten months. With the issue of whether Plaintiff was in violation of the regulation contested, discovery regarding this ten-month period is relevant and permissible.

Plaintiff next objects to discovery regarding “overly broad” discovery that seeks to determine the status of all cars on his lot. He argues that the zoning regulation concerns only storing cars for repair, and as such, requests which seek information about other cars are accordingly beyond the scope of discovery. For instance, he objects to providing information about the number and names of his employees, as it is not against the zoning regulation for employees to store their cars on his lot. He objects to discovery regarding towing activities, as some were unrelated to repair work, such as those at the police department’s request due to a drunk driver. The objection is without merit. Discovery regarding the status of all cars on Plaintiff’s lot is permissible. Defendants may investigate the status of these cars, including quantifying and identifying them. To the extent that

Plaintiff wishes to assert that some of the cars were not related to repair activities, such as those owned by his employees or those towed for non-repair-related reasons, he may later offer evidence to this effect. It is not, however, reason to bar Defendants access to the same information.

Plaintiff next objects that the information sought should instead be sought from the Town of Fairfield, not him. The objection is without merit. FED. R. CIV. P. 34(a) permits requests for production of documents “which are in the possession, custody or control of the party upon whom the request is served.” It is not a defense for a party to point out that a non-party also has access to the same or similar documents. If it were, one wonders why the Town of Fairfield could not make the same defense and assert that Defendants seek their information from Plaintiff.

V. CONCLUSION

Defendants’ motion for expedited consideration, (Dkt. No. 21), is **granted**. Defendants’ motion to compel, (Dkt. No. 22), is **granted**. Plaintiff shall have until June 5, 2001 to comply.

SO ORDERED.

Dated at New Haven, Connecticut, May __, 2001.

Peter C. Dorsey
Senior United States District Judge